



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2018-0020]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 51 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on March 17, 2018. The exemptions expire on March 17, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, S.E., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

II. Background

On February 14, 2018, FMCSA published a notice announcing receipt of applications from 51 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (83 FR 6685). The public comment period ended on March 16, 2018, and five comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no

established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received five comments in this proceeding. Vicky Johnson stated that Minnesota Department of Public Safety is in favor of granting exemptions to the following Minnesota drivers: Mark S. Schellhammer, Daniel G. Roach, and Donald R. Heupel.

The Motor Vehicle Division (DMV) in the State of Montana reviewed the driving record of Marty G. Niles and found evidence that indicates Mr. Niles will not be able to achieve the statutory level of safety. FMCSA met with representatives of the DMV and reviewed Mr. Niles' driving record which had new information not provided in the application submitted to the Agency. FMCSA determined that Mr. Niles does meet the criteria to receive the exemption.

Tommy Friend and Austin Thies stated that they believe anyone who decides to drive a CMV with diabetes should be allowed to do so without discrimination. FMCSA believes that the individualized assessment of exemption applicants addresses the commenter's concern about discrimination, while maintaining an equivalent level of public safety. FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, the FMCSRs are not contrary to the Americans with Disabilities Act (ADA) of 1990. The mandates of the ADA do not require that FMCSA alter the driver qualification requirements contained in 49 CFR Part 391. The Senate report on the ADA, submitted by its Committee on Labor and Human Resources, included the following explanation:

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under title I of this legislation. S. Rep. 101-116, at 25 (1989).

The Agency's current approach, articulated in this *Federal Register* notice, nevertheless meets the spirit of the ADA by conducting an individualized assessment of each exemption applicant's medical history and the concomitant level of safety risk. The Agency's case-by-case review of exemption applicants provides the best assurance of drivers being treated fairly, while at the same time addressing public safety concerns.

George Benson states that if a person is truly taking care of their diabetes, it should not take as long as it does to get the exemption and the process does not have to be so difficult. FMCSA is required by statute to complete the application process within 180 days from the date all required information is submitted by the applicant. However, this is often completed well in advance of this timeframe. This timeframe includes time to review application information and meet Federal Register publication requirements to include a 30-day public comment period, as required by law.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent

or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the February 14, 2018, Federal Register notice (83 FR 6685) and will not be repeated in this notice.

These 51 applicants have had ITDM over a range of 1 to 47 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must submit a quarterly

monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 51 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Tina M. Adams (NY)	Steven A Bain (RI)
Joseph M. Ballard (MI)	Edward L. Barron (TX)
James A. Beck (KY)	George R. Benson (TX)

Jason D. Bonham (KS)	Dennis L. Bowden (CA)
Harry C. Davis (PA)	Warren E. Davis (IL)
Anderson N. Debitencourte (MA)	George M. Dickherber (MO)
Craig A. Dixon (IA)	Sandra M. Fazio (NH)
Thomas M. Gibbs (VA)	Willi M. Goolsbey (NM)
Eli J. Goudreau (MA)	John W. Green (IA)
Delight A. Halfred (SD)	Vernell Harris (IL)
Robert L. Harris (TN)	Donald R. Heupel (MN)
Michael J. Hobbs (TX)	Arnold Hollins (IL)
Sarvar Kachiev (IL)	Sidney G. Lehman (PA)
John H. Lowe, Jr. (CO)	Robert R. Martin (KS)
Christopher C. McMurray (CA)	Davis K. Mensah (VA)
Jeffrey R. Meyer (CA)	Kurtis A. Nichols (MO)
Marty G. Niles (MT)	Darrell E. Oliver (TN)
Timothy P. Oliver (OR)	Fred W. Payne (OR)
Ronald L. Pellack, Jr. (IL)	Edward F. Poe (MI)
Clint A. Richter (PA)	Daniel G. Roach (MN)
Mark S. Schellhammer (MN)	Edward R. Sutton (CA)
Maurice L. Talley (NV)	Brandon L. Tatman (CO)
Austin M. Thies (IA)	Robert J. Tischler (UT)
Michael Tucker (NJ)	Leonard J. Warnock (WA)
John R. Wohlers (WI)	David L. Woodfill (CA)

Daniel J. Woodring (MI)	
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In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: May 17, 2018.

Larry W. Minor,

Associate Administrator for Policy.

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